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23 March 2017

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United Nations conference to negotiate a legally binding instrument to prohibit nuclear weapons, leading towards their total elimination

New York, 27-31 March and 15 June-7 July 2017

Agenda item 8 (b)

General exchange of views on all matters

Recommendations for the negotiation of a legally binding instrument to prohibit nuclear weapons, leading towards their total elimination

Submitted by the secretariat of the Agency for the Prohibition of Nuclear Weapons in Latin America and the Caribbean

I. Introduction

1. The General Assembly, by its resolution 71/258, decided to convene a United Nations conference in 2017 to negotiate a legally binding instrument to prohibit nuclear weapons, leading towards their total elimination. The objective of the Conference is thus clearly stated in the title itself.

2. The States Members of the United Nations overwhelmingly consider that there is a legal gap in the sense that nuclear weapons, unlike other weapons of mass destruction, are not subject to prohibition in international law.

3. The international regime on the non-proliferation of nuclear weapons has had relative success as, since 1967, just four States have become possessors of nuclear weapons. Some progress in the reduction of nuclear arsenals is also to be acknowledged. However, these advances are not enough to fulfil the provisions of article VI of the Treaty on the Non-Proliferation of Nuclear Weapons, which is the sole global commitment currently in existence in international law to achieve nuclear disarmament.

4. Among international efforts and initiatives on non-proliferation and nuclear disarmament, the establishment of nuclear-weapon-free zones represents a concrete achievement, given that it is focused on the prohibition of nuclear weapons, leading towards their total elimination.

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II. Essential elements of a legally binding instrument to prohibit nuclear weapons

5. The United Nations conference is convened in order to negotiate a legally binding instrument. It is not a deliberative meeting. The objective of the legally binding instrument is nuclear weapons, and it is aimed at prohibiting them. In other words, the intention of the General Assembly is to establish the illegality of nuclear weapons by means of a legally binding instrument.

6. A legally binding instrument must therefore include, inter alia:

(a) A definition of what is being prohibited;

(b) The scope of the prohibition;

(c) Clauses concerning the modalities for ensuring compliance and measures in case of non-compliance;

(d) A mechanism for deliberation and exchange of information among the contracting parties and the services necessary for its functioning;

(e) Relationship to the United Nations, the International Atomic Energy Agency and the Treaty on the Non-Proliferation of Nuclear Weapons;

(f) Participation;

(g) Final clauses.

7. According to General Assembly resolution 71/258, the legally binding instrument should be conceived as leading towards the total elimination of nuclear weapons. This is an important clarification, as otherwise nuclear weapons would be made illegal or prohibited, but their existence would be authorized and their total elimination would not be foreseen. The prohibition envisaged does not address the use or the threat of use of nuclear weapons. The illegality of nuclear weapons, once established, logically leads to their total elimination. In its wisdom, the General Assembly separated the two stages but made it clear that the first leads to the second. The General Assembly proceeded in that way owing to the dauntingly complex operations involved in the elimination stage. The initial step of prohibition can be taken separately from elimination.

8. It is important not to confuse prohibition with elimination. Besides measures inherent to it, elimination may include many collateral undertakings such as humanitarian, environmental, financial, scientific and technical cooperation. If the two stages were to be negotiated at the same time in a single document, the probabilities of failure would increase dramatically. Prohibition is an essential foundation for elimination. The former should not be hostage to the latter.

9. The seven essential elements of the legally binding instrument highlighted in paragraph 6 above are briefly explained below, taking, as the case may be, the achievements in legal as well as in practical terms of the treaties establishing nuclear-weapon-free zones, the first being the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (Treaty of Tlatelolco), which marked its fiftieth anniversary on 14 February 2017.

(a) Definition of what is being prohibited

10. The Treaty of Tlatelolco contains one of the first and few definitions of nuclear weapon in an international legal instrument. That definition has not been called into question, either by any State party to the Treaty of Tlatelolco or by any State party to the Additional Protocols to the Treaty.[1]

11. In article 5 of the Treaty of Tlatelolco, "nuclear weapon" is defined as follows:

> For the purposes of this Treaty, a nuclear weapon is any device which is capable of releasing nuclear energy in an uncontrolled manner and which has a group of characteristics that are appropriate for use for warlike purposes. An instrument that may be used for the transport or propulsion of the device is not included in this definition if it is separable from the device and not an indivisible part thereof.

(b) Scope of the prohibition

12. The Treaty of Tlatelolco is the first multilateral legal instrument to prohibit nuclear weapons, leading towards their total elimination.

13. Article 1 of the Treaty of Tlatelolco, regarding prohibitions and obligations, contains the following fundamental elements:

(a) Nuclear energy shall be used exclusively for peaceful purposes. This is the starting point of the Treaty of Tlatelolco;

(b) States parties to the Treaty are prohibited from the following five activities in relation to nuclear weapons: testing, use, manufacture, production, acquisition;

(c) States parties to the Treaty are prohibited from undertaking the above-mentioned five activities in relation to nuclear weapons pertaining to third States by means of receipt, storage, installation, deployment, possession;

(d) Such activities are prohibited to the States parties to the Treaty either in their territories or in the territories of third parties in any way;

(e) Prohibitions cover the actions of States parties directly or indirectly, by themselves or on behalf of anyone else.

14. Article 1 of the Treaty of Tlatelolco reads as follows:

> 1. The Contracting Parties hereby undertake to use exclusively for peaceful purposes the nuclear material and facilities which are under their jurisdiction, and to prohibit and prevent in their respective territories:
>
> a. The testing, use, manufacture, production or acquisition by any means whatsoever of any nuclear weapons, by the Parties themselves, directly or indirectly, on behalf of anyone else or in any other way, and

[1] China, France, the Netherlands, the Russian Federation, the United Kingdom of Great Britain and Northern Ireland and the United States.

b. The receipt, storage, installation, deployment and any form of possession of any nuclear weapons, directly or indirectly, by the Parties themselves, by anyone on their behalf or in any other way.

2. The Contracting Parties also undertake to refrain from engaging in, encouraging or authorizing, directly or indirectly, or in any way participating in the testing, use, manufacture, production, possession or control of any nuclear weapon.

(c) Clauses covering the modalities for ensuring compliance and remedies for non-compliance

15. The United Nations conference to negotiate a legally binding instrument to prohibit nuclear weapons should include a control system to ensure compliance with obligations regarding the prohibition of nuclear weapons.

16. The control system established by the Treaty of Tlatelolco in articles 13-18 contains both subjective and objective elements. The subjective elements include the semi-annual reports whereby the Parties to the Treaty formally notify the Agency for the Prohibition of Nuclear Weapons in Latin America and the Caribbean that no activity prohibited by the instrument has taken place in their respective territories. The objective elements of the control system include the conclusion and implementation of safeguards agreements with the International Atomic Energy Agency (IAEA) in order to ensure that nuclear energy be used exclusively for peaceful purposes.

17. The role of IAEA in the legally binding instrument to prohibit nuclear weapons will need to be carefully studied and strengthened to ensure compliance with the prohibition of nuclear weapons.

(d) A mechanism for deliberation and exchange of information among the contracting parties and the services necessary to its functioning

18. The legally binding instrument to prohibit nuclear weapons could include conferences of the Parties with the support of the United Nations and IAEA. The Conferences might, as necessary, create an institution or secretariat to assist with the implementation of the treaty.

19. Article 7 of the Treaty of Tlatelolco reads as follows:

1. In order to ensure compliance with the obligations of this Treaty, the Contracting Parties hereby establish an international organization to be known as the "Agency for the Prohibition of Nuclear Weapons in Latin America and the Caribbean", hereinafter referred to as "the Agency". Only the Contracting Parties shall be affected by its decisions.

2. The Agency shall be responsible for the holding of periodic or extraordinary consultations among Member States on matters relating to the purposes, measures and procedures set forth in this Treaty and to the supervision of compliance with the obligations arising there from.

3. The Contracting Parties agree to extend to the Agency full and prompt co-operation in accordance with the provisions of this Treaty, of any agreements they may conclude with the Agency and of any agreements the Agency may conclude with any other international organization or body.

20. Throughout the last 50 years, the Agency for the Prohibition of Nuclear Weapons in Latin America and the Caribbean has fulfilled the functions conferred on it by the Treaty of Tlatelolco, namely, the implementation of the control system. The Agency's secretariat organizes the sessions of the general conference, which establish procedures for the control system in order to ensure observance of the Treaty in accordance with its provisions (see art. 9, para. 2 (b)).

21. The Council of the Agency for the Prohibition of Nuclear Weapons in Latin America and the Caribbean has to date held 306 meetings, generally every two months, to ensure compliance with the obligations under the Treaty and to receive the semi-annual communications derived from article 14 of the Treaty, which relate to the absence of activities prohibited under the Treaty; and those reports derived from article 24 with respect to agreements concluded by States parties on matters with which the Treaty is concerned.

22. The establishment of the Agency for the Prohibition of Nuclear Weapons in Latin America and the Caribbean has been effective not only in ensuring compliance with the obligations of States parties with respect to the Treaty of Tlatelolco. It has also served as a mechanism to strengthen transparency regarding non-proliferation obligations. The institutionalization of the commitments and obligations deriving from the Treaty of Tlatelolco, through the Agency, is based on the principle that States can address security concerns and prevent possible conflicts through legal provisions.

(e) Relationship to the United Nations, the International Atomic Energy Agency, the Treaty on the Non-Proliferation of Nuclear Weapons and the treaties establishing nuclear-weapon-free zones

23. The conference of States parties to the legally binding instrument to prohibit nuclear weapons could be held under the auspices of the United Nations. The experience and participation of IAEA in such conferences would also be valuable, to review the implementation of the legally binding instrument.

24. Since the negotiation of a legally binding instrument to prohibit nuclear weapons, leading towards their total elimination, is related to the provisions of article VI of the Treaty on the Non-Proliferation of Nuclear Weapons, the review conferences of the Parties to the Treaty could include discussion on the implementation of the legally binding instrument.

(f) Participation

25. In its resolution 71/258, the General Assembly encourages all Member States to participate in the conference. In other words, the General Assembly is not excluding the participation of any State and the legally binding instrument should be open for signature to any State.

26. The General Assembly should call upon all Member States to adhere to the legally binding instrument to prohibit nuclear weapons, leading towards their total elimination.

(g) Final clauses

27. The legally binding instrument to prohibit nuclear weapons should include a formula that makes viable its early entry into force. This means that the instrument should be in force once it has been ratified by a specified number of States, without any distinction of categories among them. Its entry into force cannot depend on its ratification by nuclear-weapon States or by any other category of States.

28. In both domestic and international law, full compliance with obligations is mandated. Laws must be fully complied with; therefore, semi-compliance is not an option. In this regard, the legally binding instrument should not be subject to reservations.

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Elements of a treaty to prohibit nuclear weapons

Submitted by the International Committee of the Red Cross

The International Red Cross and Red Crescent Movement, of which the International Committee of the Red Cross (ICRC) is a part, has been calling for the elimination of nuclear weapons since 1945, when we witnessed first-hand the unspeakable suffering caused by the atomic bombings. In 2011, the International Red Cross and Red Crescent Movement appealed to all States to "pursue in good faith and conclude with urgency and determination negotiations to prohibit the use of and completely eliminate nuclear weapons through a legally binding international agreement, based on existing commitments and international obligations". ICRC welcomes the fact that such negotiations are now taking place, through an inclusive process in the framework of the United Nations General Assembly.

The present paper outlines the views of ICRC on key elements of a treaty to prohibit nuclear weapons. It identifies issues that ICRC believes States should consider as they develop their views and proposals on the treaty's core components.

Like other treaties, a legally binding instrument to prohibit nuclear weapons should set out its underlying principles. ICRC believes that the treaty should clearly indicate that it is based on a recognition of the catastrophic humanitarian consequences of nuclear weapons and the imperative to prevent their use, the difficulty of reconciling the use of these weapons with international humanitarian law, the growing risks of intentional, miscalculated or accidental use of nuclear weapons and the lack of adequate humanitarian response capacity to assist the victims of nuclear weapons, and also recognize that nuclear weapons are abhorrent to the principles of humanity and the dictates of public conscience. The treaty to prohibit nuclear weapons should also reaffirm the importance of the Treaty on the Non-Proliferation of Nuclear Weapons, recall the obligations of article VI of that

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Treaty and recall the commitments made in the action plans adopted by Review Conferences of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons.

The treaty should also set out its object and purpose. In the view of ICRC, the object and purpose of the global prohibition on nuclear weapons include: to protect humanity from the catastrophic humanitarian consequences that any use of nuclear weapons would have; to establish a prohibition at the global level; and to advance towards the total elimination of nuclear weapons and to help bring the era of nuclear weapons to an end once and for all time.

As stated in the conference's mandate, the primary goal of the negotiation is to establish a prohibition of nuclear weapons, leading to their total elimination.[1] To be effective the treaty's prohibitions must be clear and robust. This would require specific prohibitions on use and on key activities that support use. In the view of ICRC, the range of prohibitions listed in article 1, paragraph 1, of the Chemical Weapons Convention — namely, to prohibit the use, development, production, acquisition, stockpiling, retention or transfer of chemical weapons, and to prohibit assisting, encouraging or inducing anyone, in any way, to engage in any of these activities — would suffice to achieve the purposes of the treaty to ban nuclear weapons. These essential prohibitions employ well-understood terminology, which also served as the basis for the prohibitions set out in other international conventions prohibiting weapons.

The conference's mandate provides that the prohibition of nuclear weapons is to lead "towards their total elimination". Indeed, the elimination of nuclear weapons is essential to ensure that they are never again used. The treaty should therefore contain a clear commitment regarding the elimination of nuclear weapons.

In particular, in addition to the prohibition on stockpiling nuclear weapons, the treaty could contain an obligation for a State Party to declare, remove from operational status and destroy any nuclear weapons that it may possess at the time of its adherence to the treaty. Such a commitment to eliminate nuclear weapons would allow a State that possesses nuclear weapons to join the treaty without needing to wait for the completion of its stockpile destruction.

The time frame and details for the eventual elimination of a State's nuclear arsenal and its verification could be left for discussion between the States possessing nuclear weapons and other States parties, and detailed in subsequent agreements or protocols.

The treaty should also include an obligation that each State Party take the measures required at the national level to implement its obligations, including the imposition of penal sanctions to prevent and suppress violations.

States should consider how best to ensure that the needs of the victims of nuclear weapon detonations are recognized and advanced and to consider the most suitable approach to facilitate assistance and cooperation for the implementation of the treaty's obligations and to further its goals.

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[1] See General Assembly resolution 71/258, para. 8.

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Topic 1. Principles and objectives and preambular elements

Submitted by Colombia

Preamble

Recalling the Declaration of the Tenth Special Session of the General Assembly, the first special session devoted to disarmament, in which it is stated, inter alia, that all the peoples of the world have a vital interest in the success of disarmament negotiations, and that all States have the right to participate in disarmament negotiations, (preamble, General Assembly resolution 71/258)

Reaffirming the role and functions of the Conference on Disarmament and the Disarmament Commission, as set out in the Final Document of the Tenth Special Session of the General Assembly, (preamble, resolution 71/258)

Welcoming the efforts by Member States to secure progress in multilateral disarmament and the support of the Secretary-General for such efforts, and recalling in this regard the Secretary-General's five-point proposal on nuclear disarmament, (preamble, resolution 71/258)

Recalling that the Treaty on the Non-Proliferation of Nuclear Weapons, which serves as the cornerstone of the nuclear non-proliferation and disarmament regime, was negotiated considering the devastation that would be visited upon all mankind by a nuclear war and the consequent need to make every effort to avert the danger of such a war and to take measures to safeguard the security of peoples, (preamble, resolution 71/258)

Recalling also the obligations of States parties to the Treaty and their commitments as reflected in the outcome documents of the 1995 Review and Extension Conference of the Parties to the Treaty on the Non-Proliferation of

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Nuclear Weapons, and of the 2000 and the 2010 Review Conferences of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, (preamble, resolution 71/258)

Reaffirming the absolute validity of multilateral diplomacy in the field of disarmament and non-proliferation, and determined to promote multilateralism as an essential way to develop arms regulation and disarmament negotiations, (preamble, resolution 71/258)

Recognizing that the current international climate makes increased political attention to disarmament and non-proliferation issues, the promotion of multilateral disarmament and the achievement of a world without nuclear weapons all the more urgent, (preamble, resolution 71/258)

Deeply concerned about the catastrophic humanitarian consequences of any use of nuclear weapons, (preamble, resolution 71/258)

Cognizant of the fact that the risk of nuclear weapons use with their unacceptable consequences can only be avoided when all nuclear weapons have been eliminated, (Humanitarian Pledge)

Emphasizing that the consequences of a nuclear weapon explosion and the risks associated with nuclear weapons concern the security of all humanity and that all States share the responsibility to prevent any use of nuclear weapons, (Humanitarian Pledge)

Welcoming the high-level meeting of the General Assembly on nuclear disarmament, held on 26 September 2013 pursuant to its resolution 67/39 of 3 December 2012, which highlighted the wish of the international community for progress in this field, and noting its resolution 68/32 of 5 December 2013 as a follow-up to this meeting, (preamble, resolution 71/258)

Welcoming also the report on the work of the Open-ended Working Group to develop proposals to take forward multilateral nuclear disarmament negotiations for the achievement and maintenance of a world without nuclear weapons, submitted pursuant to its resolution 67/56 and referenced in its resolution 68/46, and noting with appreciation the report of the Secretary-General submitted pursuant to its resolution 68/46, containing the views of Member States on how to take forward multilateral nuclear disarmament negotiations, including the steps that Member States have already taken to that end, (preamble, resolution 71/258)

Welcoming further the efforts by all Member States, international organizations and civil society to continue to enrich the discussions on how to take forward multilateral nuclear disarmament negotiations in the United Nations bodies in which disarmament and peace and security are addressed, (preamble, resolution 71/258)

Bearing in mind that a legally binding instrument prohibiting nuclear weapons would be an important contribution towards comprehensive nuclear disarmament, (preamble, resolution 71/258)

Bearing in mind also that additional measures, both practical and legally binding, for the irreversible, verifiable and transparent destruction of nuclear

weapons would be needed in order to achieve and maintain a world without nuclear weapons, (preamble, resolution 71/258)

Stressing the importance of inclusiveness, and welcoming the participation of all Member States in the efforts to achieve a nuclear-weapon-free world, (preamble, resolution 71/258)

Emphasizing the importance and urgency of securing substantive progress on priority nuclear disarmament and non-proliferation issues, (preamble, resolution 71/258)

Determined, for the sake of all mankind, to exclude completely the possibility of the use of nuclear weapons, through the implementation of the provisions of this Convention, (based on preamble, Chemical Weapons Convention)

Bearing in mind that, in paragraph 8 of its resolution 71/258, the General Assembly decided to convene in 2017 a United Nations conference to negotiate a legally binding instrument to prohibit nuclear weapons, leading towards their total elimination, (based on paragraph 8, resolution 71/258)

Recalling that, in paragraph 12 of its resolution 71/258, the General Assembly called upon States participating in the conference to make their best endeavours to conclude as soon as possible a legally binding instrument to prohibit nuclear weapons, leading towards their total elimination, (based on paragraph 12, resolution 71/258)

Emphasizing the desirability of achieving universal adherence to this Treaty, (preamble, Arms Trade Treaty)

Determined to act in accordance with the following principles, (preamble, Arms Trade Treaty)

Principles

- The settlement of international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered in accordance with Article 2 (3) of the Charter of the United Nations; (principles, Arms Trade Treaty)
- Respecting and ensuring respect for international humanitarian law in accordance with, inter alia, the Geneva Conventions of 1949, and respecting and ensuring respect for human rights in accordance with, inter alia, the Charter of the United Nations and the Universal Declaration of Human Rights; (principles, Arms Trade Treaty)
- The commitment to pursuing nuclear disarmament in accordance with the provisions of article VI of the Treaty on the Non-Proliferation of Nuclear Weapons; (based on article VI, Treaty on the Non-Proliferation of Nuclear Weapons)
- Strengthening the disarmament and nuclear non-proliferation regime, including the three pillars of the Treaty on the Non-Proliferation of Nuclear Weapons, and ensuring that under no circumstances shall the integrity of the Treaty on the Non-Proliferation of Nuclear Weapons be directly or indirectly affected;

- The importance of addressing issues related to nuclear weapons in a comprehensive, inclusive, interactive and constructive manner; (based on paragraph 4, resolution 71/258)

Objectives

- Contributing to international and regional peace, security and stability; (based on article 1, Arms Trade Treaty)
- Achieving and maintaining a world without nuclear weapons; (based on paragraph 4, resolution 71/258)
- Promoting confidence-building measures among States as a means of creating conditions that facilitate the total elimination of nuclear weapons.

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Possible elements of a United Nations nuclear-weapon-ban treaty

Submitted by Papua New Guinea

I. Introduction

1. Pacific islanders have suffered greatly as a result of half a century of nuclear testing in our region. The ongoing impact of more than 300 nuclear test explosions on our fragile ecology, physical health and mental well-being has been profound. This lived experience of the horrors of nuclear weapons informs our policies on nuclear disarmament and impels us to contribute substantively to the United Nations negotiations on a legally binding instrument to prohibit nuclear weapons, leading towards their total elimination, as authorized under resolution 71/258.

2. In the present paper, we set out a number of recommendations with respect to the content of the legally binding instrument to prohibit nuclear weapons. We consider the prohibition and elimination of nuclear weapons to be an essential part of our broader struggle to end violence, promote harmony and friendship among the peoples of the world, achieve justice and respect for human rights and ensure a safe, clean and healthy environment for the benefit of present and future generations. Having experienced the devastating humanitarian consequences of nuclear testing in our region, we are firmly committed to achieving a robust and effective treaty.

II. Preambular elements

3. In the preamble to the treaty, States parties should, inter alia:

(a) Express their deep concern about the catastrophic humanitarian consequences of any use of nuclear weapons and the grave risk of such use so long as the weapons exist;

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(b) Express their determination, for the sake of all humankind, to eliminate nuclear weapons completely;

(c) Stress that, in a world where basic human needs have not yet been met, the vast resources allocated to the production, modernization and maintenance of nuclear arsenals should be redirected towards social and economic development;

(d) Fully reject any role for nuclear weapons in military doctrines in the light of their indiscriminate nature, inherent immorality and potential to annihilate humanity and the planet as a whole;

(e) Express their determination to ensure the full realization of the rights of all victims of nuclear weapons and acknowledge the disproportionate and ongoing impact of the use, testing and development of nuclear weapons on women and girls and on indigenous communities around the world;

(f) Resolve to do their utmost to provide assistance, including medical care, rehabilitation and psychological support, to all victims of nuclear weapons and to provide for their social and economic inclusion;

(g) Stress the role of public conscience in furthering the principles of humanity as evidenced by the global call for the total elimination of nuclear weapons, and recognize the efforts to that end undertaken by the United Nations, the International Red Cross and Red Crescent Movement and the International Campaign to Abolish Nuclear Weapons;

(h) Emphasize the desirability of attracting the adherence of all States to the treaty and express their determination to work strenuously towards the promotion of its universalization and full implementation;

(i) Welcome the broad support for the international norms prohibiting other indiscriminate weapons, including biological and toxin weapons, chemical weapons, anti-personnel landmines and cluster munitions;

(j) Underscore that any use of nuclear weapons would be incompatible with the requirements of international law, including international humanitarian law, or the laws of morality or the dictates of public conscience;

(k) Reaffirm that there exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control;

(l) Reaffirm also the objective of general and complete disarmament.

III. General obligations

4. States parties should never, under any circumstances, undertake:

(a) To use or threaten to use nuclear weapons, or engage in any military preparations, including planning and training, for the use or threat of use of nuclear weapons;

(b) To conduct research on, develop, produce, otherwise acquire, test, deploy, stockpile, retain, possess or have control over, or transfer to anyone, directly or indirectly, nuclear weapons;

(c) To develop, produce or test missiles, rockets or other systems capable of delivering nuclear weapons and specially designed for such use;

(d) To assist, finance, encourage or induce anyone to engage in any activity prohibited to States parties under the treaty.

5. States parties should undertake to prevent the stationing or transit of nuclear weapons in their territory, including their airspace and territorial waters, and to deny visits to their ports by ships carrying nuclear weapons or visits to their airfields by aircraft carrying nuclear weapons.

6. States parties should undertake not to invest, directly or indirectly, in companies or other entities materially involved in programmes to develop or modernize nuclear weapons, and to prohibit such investment by companies or other entities within their jurisdiction.

IV. Definitions

7. If the treaty is to define "nuclear weapon" or "nuclear explosive device", it could adopt the definition contained in the South Pacific Nuclear Free Zone Treaty of 1985, namely, any nuclear weapon or other explosive device capable of releasing nuclear energy, irrespective of the purpose for which it could be used, including such a weapon or device in unassembled and partly assembled forms, but not the means of transport or delivery of such a weapon or device if separable from and not an indivisible part of it.

V. Stockpile destruction

8. States parties should undertake to destroy all nuclear weapons under their jurisdiction or control as soon as possible and in accordance with verification arrangements and a time frame to be determined collectively by the States parties. In destroying all nuclear weapons under their jurisdiction or control, States parties should ensure that all necessary safety precautions are observed to protect populations and the environment.

VI. Assistance to victims

9. States parties should undertake to provide adequate assistance to victims of nuclear weapons in areas under their jurisdiction or control and to provide for their social and economic inclusion. Such assistance should include medical care, rehabilitation and psychological support. States parties that are in a position to do so should assist other States parties in fulfilling this obligation.

10. The treaty should define victims of nuclear weapons broadly to include all persons who have been killed or have suffered physical or psychological injury, economic loss, social marginalization or substantial impairment of the realization of their rights as a result of the use, testing or development of nuclear weapons, including those persons directly affected by nuclear weapons and their affected families and communities.

VII. Environmental remediation

11. States parties should undertake to remediate territories contaminated as a result of activities relating to the use, testing, production or storage of nuclear weapons in their territory. Those that are in a position to do so should assist other States parties in fulfilling this obligation.

VIII. International cooperation and assistance

12. States parties should have the right to seek and receive assistance in fulfilling their obligations under the treaty. Such assistance may be provided through, inter alia, the United Nations, international, regional or national organizations or non-governmental organizations, or on a bilateral basis.

13. States parties that are in a position to do so should undertake to provide assistance to contribute to the economic and social recovery needed owing to the use, testing and development of nuclear weapons in affected States parties.

IX. Transparency measures

14. States parties should report to the Secretary-General of the United Nations as soon as practicable, and in any event not later than a specified number of days after the entry into force of the treaty for those States parties, on, inter alia:

(a) The number, type and location of all nuclear weapons in their territory and/or under their jurisdiction or control;

(b) The status and progress of programmes for the destruction of all nuclear weapons under their jurisdiction or control;

(c) The status and progress of programmes for providing assistance to victims of nuclear weapons;

(d) The status and progress of programmes for remediating territories contaminated by nuclear weapons.

X. Facilitation and clarification of compliance

15. States parties should undertake to consult and cooperate with one other regarding the implementation of the treaty and to work together in a spirit of cooperation to facilitate compliance by States parties with their obligations.

16. The treaty should establish a procedure by which States parties may clarify and seek to resolve questions relating to a matter of compliance by other States parties with the provisions of the treaty.

XI. National implementation measures

17. States parties should take all appropriate legal, administrative and other measures, including the imposition of penal sanctions, to prevent or suppress any activity prohibited to States parties under the treaty undertaken by persons or on territory under their jurisdiction or control.

XII. Settlement of disputes

18. The treaty should stipulate that, when a dispute arises between two or more of its States parties relating to the interpretation or application of the treaty, the States parties concerned should consult together with a view to the expeditious settlement of the dispute by negotiation or by other peaceful means of their choice, including recourse to a meeting of States parties and referral to the International Court of

Justice. The proposed entity (see paras. 21 and 22) could also play a role in the settlement of disputes.

XIII. Meetings of States parties

19. States parties should meet at least annually in order to consider and, where necessary, take decisions in respect of any matter with regard to the application or implementation of the treaty.

XIV. Establishment of an entity

20. The treaty should establish an entity, under the auspices of the United Nations, to oversee the implementation of the treaty, ensure compliance with its provisions and provide a forum for consultation and cooperation among States parties. All States parties should be members of the entity.

21. The entity should also have a mandate to educate the public about the treaty and the humanitarian impact of nuclear weapons.

XV. Amendments

22. The treaty should allow for the possibility of amendments. Nevertheless, it should not allow certain States parties to conclude any agreement to modify the treaty as between themselves alone.

XVI. Signature

23. The treaty should be open for signature by any State, including one that is not a member of the United Nations.

XVII. Ratification and accession

24. The treaty should be subject to ratification, acceptance or approval by its signatories. Any State that has not signed and ratified the treaty before its entry into force should be permitted to accede to it at any time thereafter. The treaty should enter into force for that signatory on the date of deposit of its instrument of ratification.

XVIII. Entry into force

25. The treaty should enter into force six months after 30 States or thereabouts have deposited their instruments of ratification.

26. Entry into force should not be contingent upon the ratification of any particular State or group of States. The difficulty in securing the entry into force of the Comprehensive Nuclear-Test-Ban Treaty, which was opened for signature more than two decades ago, provides an important lesson in this regard.

XIX. States not parties to the treaty

27. States parties should undertake to encourage States not parties to the treaty (third States) to ratify, accept, approve or accede to the treaty, with the goal of attracting the adherence of all States to the treaty.

XX. Reservations

28. The treaty should specify that States parties are not permitted to make reservations with respect to any articles of the treaty.

XXI. Duration and withdrawal

29. The treaty should be of unlimited duration and should remain in force indefinitely. It should not include a withdrawal provision.

XXII. Depositary

30. The Secretary-General of the United Nations should serve as the depositary of the treaty.

XXIII. Authentic texts

31. The Arabic, Chinese, English, French, Russian and Spanish texts of the treaty should be equally authentic.

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Agenda item 8 (b)
General exchange of views: general exchange of views on all matters

Definition of a nuclear weapon in a treaty prohibiting nuclear weapons

Submitted by Sweden

I. Introduction

1. In a treaty prohibiting specific activities relating to nuclear weapons, a definition of the treaty-accountable item facilitates a better understanding of the prohibited listed activities. When it comes to nuclear weapons, such is already the case in, for example, the nuclear-weapon-free zone treaties. Definitions also exist in other relevant prohibition conventions, including the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, the Convention on Cluster Munitions and the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction.

2. Simultaneously, and no less importantly, a definition of the treaty-accountable item ensures that the inalienable right to develop research, production and use of nuclear energy for peaceful purposes without discrimination is not adversely affected.

II. Elements of a definition

3. There are four aspects to consider in the definition of a nuclear weapon in a treaty prohibiting nuclear weapons.

4. **Fissile material.** The objectives of a treaty prohibiting nuclear weapons include it leading towards their total elimination (and then maintaining a world free of nuclear weapons). Given that the immediate aim is prohibition, however, it would be premature to include specific language on the fissile material component of

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nuclear weapons at this stage. Explicit text thereon should instead be incorporated at the elimination phase and/or into other instruments such as a fissile material cut-off treaty.

5. **Means of transport or delivery.** Likewise, it is not practical to include specific language on the means of transport or delivery of a nuclear weapon, if it is separable from and not an indivisible part of it; to date there is no international regime for monitoring the use of this class of delivery vehicles. In fact, the nuclear-weapon-free zone treaties explicitly exempt such means of transport or delivery, and language from such treaties can be used for this purpose in the definition to be used in the prohibition treaty.

6. **View of nuclear possessor States.** The definition should be coherent with the view that nuclear weapon possessor States have on the constituting characteristics of a nuclear weapon. It should be emphasized that the coherence aspect is related to the fact that the definition will constrain the activities of those States, not only in areas outside their territories but also inside their respective territories. During the 2015 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, the nuclear-weapon States presented their glossary of key nuclear terms.[1] This glossary includes a definition of the term "nuclear weapon" that should fulfil the coherence objective.

7. **Peaceful nuclear explosions.** The above-mentioned glossary refers to a "nuclear weapon" as indeed a weapon. The prohibition treaty may wish to include peaceful applications of nuclear explosions as well, and if so the glossary definition can easily be amended to cover peaceful nuclear explosions. Another option for the prohibition treaty is to treat peaceful nuclear explosions in a manner similar to the Comprehensive Nuclear-Test-Ban Treaty, whereby the Review Conference can decide by consensus to approve an underground nuclear explosion for peaceful purposes. In that case, the glossary definition can be used verbatim.

III. Definition

8. Taking the definition of a nuclear weapon from the glossary of key nuclear terms and exempting the means of transport or delivery, the proposal reads as follows:

> **Nuclear weapon**: [Weapon] assembly that is capable of producing an explosion and massive damage and destruction by the sudden release of energy instantaneously released from self-sustaining nuclear fission and/or fusion. It does not include the means of transport or delivery of such an assembly if separable from and not an indivisible part of it.

9. The use of the word in square brackets would depend on the inclusion of nuclear explosions for peaceful purposes in the prohibition treaty. The text on exempting the means of transport or delivery uses the existing definitions in the nuclear-weapon-free zone treaties. Lastly, the wording "massive damage and destruction" makes a compelling link to possible preambular paragraphs on international humanitarian law and the humanitarian consequences of the use of nuclear weapons.

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[1] See www.state.gov/documents/organization/243287.pdf.

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New York, 27-31 March and 15 June-7 July 2017
Agenda item 8 (b)
General exchange of views: general exchange of views on all matters

Need for a verification mechanism at this stage for a treaty prohibiting nuclear weapons

Submitted by Chile, Sweden and Uganda

1. Verification is a key aspect of all credible arms control, disarmament and non-proliferation agreements.

2. Verification needs to be relevant and focused on the key issues of the agreement. These will vary depending on the coverage of the agreement and the characteristics of the participating States.

3. Verification needs to be cost-effective and should not replace existing verification activities and agreements.

4. For a nuclear weapons disarmament convention that would include States with nuclear weapons, a new comprehensive control mechanism would need to be designed and set up. Some nuclear-weapon States have accumulated experience in this matter through the development and implementation of bilateral nuclear disarmament or arms control agreements. Apart from those States, the experience and expertise necessary to develop such mechanisms do not exist at this time, even though some States are making progress in projects such as the International Partnership for Nuclear Disarmament Verification and are exploring the conditions necessary to carry out nuclear disarmament verification.

5. For a treaty prohibiting nuclear weapons, such levels of verification would not be necessary in the first phases unless States with nuclear weapons participated, which appears highly unlikely at this time. Verification could be developed and negotiated at a later stage as a separate annex, involving States with nuclear weapons in the process.

6. There is, however, a need for some form of verification system to ensure that States without nuclear weapons signing up to the treaty abide by their commitments.

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7. To verify the ban on chemical weapons imposed under the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, a new organization had to be created, the Organization for the Prohibition of Chemical Weapons. Similarly, with regard to the verification of the ban on nuclear tests, the Comprehensive Nuclear-Test-Ban Treaty Organization was established. For a treaty banning nuclear weapons, the options appear to be either expanding the existing mandate of the International Atomic Energy Agency (IAEA), which is the organization tasked with verifying nuclear non-proliferation and which has extensive expertise and experience in the relevant areas, or setting up an entirely new organization.

8. Given the need for cost-effectiveness and the unnecessity of duplicating existing efforts, our position will probably be to formally expand the verifying mandate of IAEA when the time comes to verify a prohibition on nuclear weapons involving States possessing such weapons.

9. To provide the cost-effective verification capacity needed at this phase of the proposed treaty prohibiting nuclear weapons, we strongly believe that we should use existing instruments.

10. For the object and purpose of the treaty, what would be needed is a safeguards conclusion that all nuclear material has been used for peaceful activities in a State. This would be based on the IAEA finding that there are no indications of diversion of declared nuclear material from peaceful nuclear activities and no indications of undeclared nuclear material or activities in a State as a whole. IAEA draws such a conclusion only where a State has both a comprehensive safeguards agreement and an additional protocol in force. The verification provided through comprehensive safeguards (INFCIRC/153) alone will not provide sufficient assurances for a treaty prohibiting nuclear weapons.

11. We argue, therefore, that States also need to be a party to the Protocol Additional to the Agreements between States and the International Atomic Energy Agency for the Application of Safeguards, known as the "1997 Additional Protocol" (INFCIRC/540), especially as the treaty is likely to include a ban on development, which necessitates access to information at an early stage of a programme in order for IAEA to be able to verify that a State party is not violating the treaty. Access to such information can be guaranteed only through the Additional Protocol.

Conclusions

12. The treaty prohibiting nuclear weapons to be negotiated should contain legally binding commitments upon States parties to enter into agreements with IAEA based on the model Additional Protocol provided in INFCIRC/540. In this regard:

(a) It would provide the international community with the necessary assurances that States committing themselves to a ban on nuclear weapons are not carrying out activities that would be in violation of those commitments;

(b) It would strengthen the credibility of and respect for the treaty;

(c) It would make use of IAEA capacity and expertise and leave the question of verification of actual disarmament of nuclear weapons and related capacity open for the time being;

(d) With 129 States already having committed themselves to such a protocol with IAEA, the increased burden on States would be limited;

(e) By providing IAEA with access to all facilities in a State party, the Additional Protocol goes further and provides better assurances than what can be

achieved under complementary verification systems such as comprehensive safeguards (INFCIRC/153);

(f) It would allow for equal treatment and obligations for all States parties to the treaty, ensuring that no State would receive preferential treatment when it came to the verification of obligations undertaken under a treaty intended to be a global instrument.

Text proposal

13. Possible text for such an article is provided below.

Article [ ]

1. [In order to ensure verification of commitments entered into under this treaty,] [In order to ensure commitments under article/s [ ],] a State Party to this treaty, if it has not done so, shall conclude with the International Atomic Energy Agency an agreement for the application of safeguards in accordance with the Treaty on the Non-Proliferation of Nuclear Weapons (INFIRC/153) and an Additional Protocol (INFCIRC/540), no later than 12 months after the entry into force of this treaty for the State Party.

2. A State Party that fails to enter into such agreements within the stipulated time frame of 12 months shall, through the depositary [the Secretary-General of the United Nations], provide all States Parties with detailed information as to why the State Party concerned has failed in this treaty obligation and also information on how the State Party will rectify the situation, including when such agreements will be entered into.

14. Depending on whether a compliance mechanism is included in the treaty and how it is structured, language may be included such that if the situation of non-compliance persists States parties may bring the matter to that mechanism. This could be defined in a third paragraph of the proposed article.